

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE:)
)
RANDY'S METAL RECYCLING, INC.,) CASE NO. 15-30142
) CHAPTER 11
)
Debtor.)

**OBJECTION TO APPLICATION TO EMPLOY COUNSEL
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

1st Source Bank, a secured creditor of the Debtor, objects to the *Application to Employ Goldstein & McClintock LLLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to March 6, 2015* (Doc. No. 45) (the "Application") on the following grounds:

1. This Chapter 11 bankruptcy proceeding was commenced on January 30, 2015. The Debtor's objective in filing bankruptcy is to complete a sale of substantially all of its assets, in conjunction with the sale of assets of affiliated debtors. The alternative is the liquidation of the Debtor's business.

2. The Debtor's Summary of Schedules (Doc. No. 1 at p.8) states that the Debtor has assets of \$1,824,288.00 and secured debt of \$2,466,893.69.

3. 1st Source is a secured creditor of the Debtor. 1st Source was granted a blanket security interest in all of the Debtor's assets. 1st Source recovered a judgment and foreclosed its security interest in state court litigation which concluded with the entry of a judgment on August 20, 2004.

4. On April 3, 2015, 1st Source filed its Proof of Claim in the amount of \$1,596,437.44 (Claim No.8).

5. The other secured creditor of the Debtor is the Internal Revenue Service, which filed a Proof of Claim (Claim No. 1) on February 11, 2015. The total amount of the IRS's claim

is \$683,032.28. Of that amount, \$624,049.77 was filed as a secured claim, and \$52,821.84 as a priority claim. Copies of federal tax liens are attached as exhibits to the IRS's Proof of Claim.

6. Under 26 U.S.C. § 6323(c), the IRS has priority over 1st Source as to accounts receivable generated by the Debtor as of the 46th day after tax liens were recorded, and as to any new inventory acquired with the proceeds of those receivables. Otherwise, 1st Source asserts a priority lien position.

7. The Application (at ¶ 12) seeks a retainer of \$35,000.00, to be carved out of the claims of secured creditors 1st Source and the IRS. 1st Source has not agreed to a carve out. As stated in its Objection filed April 2, 2015 (Doc. No. 55), the IRS has likewise not agreed to a carve out.

8. Based on information provided in the Debtor's Schedules, the Committee was certainly aware at the time of its appointment that the secured creditors were likely only partially secured, because the value of the Debtor's collateral is less than the aggregate amount of secured debt. Accordingly, the purpose and necessity of counsel for the Committee is questionable.

9. If the Committee wishes to move forward with the employment and retention of Goldstein & McClintock LLP to represent the Committee, 1st Source believes that such representation should not be at the expense of the estate and that the Committee should bear such costs. Accordingly, 1st Source reserves all rights to object to any claims for payment of fees or costs to counsel for the Committee.

10. Furthermore, the Application (at ¶ 10) raises the prospect that fees for senior partners at rates as high as \$725 per hour may be charged for services rendered to the Committee. Such fees and rates exceed those which are "ordinary and customary" for qualified and experienced attorneys and professionals located in South Bend, Indiana and the surrounding

region.

THEREFORE, 1st Source requests that the Application be denied in its entirety or, alternatively, denied to the extent the Application seeks a retainer that the Debtor has no ability to pay and a carve out from the claims of secured creditors.

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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